

## **REMARKS**

Applicants gratefully acknowledge withdrawal of the previous obviousness rejection under 35 U.S.C. 103 and acknowledge entry of two new indefiniteness rejections under 35 U.S.C. 112 and a new obviousness rejection under 35 U.S.C. 103.

Applicants have amended Claims 19 and 20 to limit group A to pyrazolyl groups (A1), to delete the reference to labels “\*” and “#” (which refer to points of attachment on thiophene moieties L-2, L-3, and L-4 that are no longer specified in the claims and thus have no effective meaning for the phenyl moiety L-1), and to remove the numerical labels from the phenyl moiety L-1 (which are unnecessary since no part of the subsequent definitions refers to substitution at a 2- or 3-position). In addition, Applicants have amended Claim 19 to exclude fluorine from the halogens of group R<sup>11</sup> (i.e., to have the same definition of R<sup>11</sup> as in Claim 20) and have amended Claims 19 and 20 to exclude fluorine from the halogens of group R<sup>10</sup>, thereby excluding all fluorine-substituted pyrazolyl moieties. Applicants have also amended Claim 23 to delete subject matter no longer part of Claim 19, upon which Claim 23 depends. Applicants have canceled Claim 24 as being redundant. Applicants submit that the claims remain fully supported in the specification.

### **Restriction Requirement under 35 U.S.C. 121**

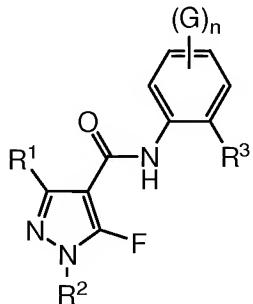
The Office Action indicates that examination has been extended beyond the initially elected species to compounds in which R<sup>1</sup> is H, R<sup>2</sup> is H, R<sup>3</sup> is methyl, and L is L-1 in which R<sup>10</sup> is CHF<sub>2</sub> or CH<sub>3</sub>, R<sup>11</sup> is H or F, and R<sup>12</sup> is CH<sub>3</sub>. Although Applicants have amended Claims 19 and 20 to delete embodiments in which A is a group other than (A1), Applicants have not amended the other definitions but again request expansion of examination. Claim 29 remains withdrawn. Applicants again request rejoinder of Claim 29 and reserve the right to file one or more divisional applications directed to all non-elected subject matter.

### **Rejection under 35 U.S.C. 103**

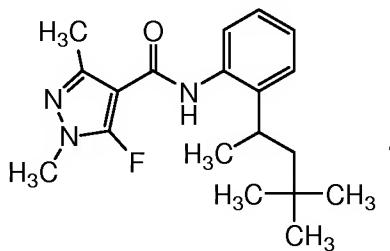
Claims 19, 20, 23, 24, and 28 stand rejected under 35 U.S.C. 103(a) as being unpatentable over WO 03/010149 (“Elbe et al”). Applicants note that Elbe et al has as a counterpart U.S. Application Serial No. 10/484,108 (published as US 2004/0204470),

which is cited in the Office Action at pages 9-11 in a provisional double patenting rejection. Applicants note further that this U.S. counterpart has now issued as U.S. Patent 7,538,073, to which Applicants will refer as "Elbe et al '073" in the following discussions. Applicants respectfully traverse.

Elbe et al discloses microbicidal pyrazolylcarboxanilides having the formula



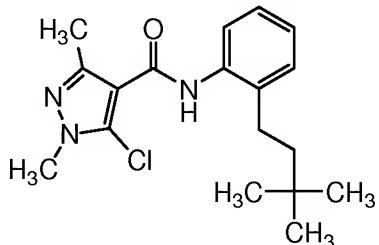
in which **R**<sup>1</sup> is hydrogen or any of a number of substituents, **R**<sup>2</sup> is hydrogen or any of a number of substituents, **R**<sup>3</sup> is either unsubstituted C<sub>2</sub>-C<sub>20</sub> alkyl or substituted C<sub>1</sub>-C<sub>20</sub> alkyl having one or more of a variety of substituents (necessarily other than alkyl since branching is presumed in view of the examples), **G** is halogen or alkyl, and **n** is zero (meaning G would be absent), 1, or 2. E.g., Elbe et al '073 at column 1, lines 24-67. In support of the rejection, the Office Action refers to the compound of Example 1 of the reference having the formula



The alkyl side chain on the phenyl ring differs from that of Applicants' compounds of formula (I) only in having a methyl group at the 1-position. Applicants, however, submit that the compounds of their claimed invention are distinguishable both structurally and biologically.

The pyrazolylcarboxanilides disclosed in Elbe et al necessarily must have a fluorine-substituted pyrazolyl moiety. In contrast, the compounds of Applicants' claimed invention never have a fluorine-substituted pyrazolyl moiety. For this reason alone, Applicants submit that Elbe et al would not lead those skilled in the art to their claimed CS8772

invention. In further support of their position, Applicants now submit a Declaration under 37 C.F.R. 1.132 of Dr. Peter Dahmen showing superior fungicidal activity for a compound within the scope of their invention having the formula



when compared with the compound disclosed in Example 1 of Elbe et al having the formula shown above. These compounds differ only in the halogen substituent on the pyrazole ring and in the presence or absence of a methyl group at the C<sub>1</sub> position of the alkyl side chain attached to the phenyl ring but exhibit, yet exhibit unexpectedly different fungicidal efficacies.

Applicants therefore submit that their claimed invention is not rendered obvious by Elbe et al.

#### Double Patenting Rejections

Applicants' claims again stand rejected under the judicially created doctrine of obviousness-type double patenting over various claims of two issued patents (formerly copending) and six still copending applications. That is, Claims 19, 20, 23, 24, and 28 stand rejected over specified claims of U.S. Patents 7,358,214 and 7,538,073 (the latter being cited as U.S. Application Serial No. 10/484,108 and identified in Applicants' previous Amendments as published US 2004/0204470) and U.S. Application Serial Nos. 10/576,050 (published as US 2007/0072930), 10/576,153 (published as US 2007/0196406), 10/583,312 (published as US 2007/0276022), 10/557,083 (published as US 2007/0066673), 10/597,723 (published as US 2007/0203148), and 10/576,243 (published as US 2007/0037858). Although Applicants believe that their claimed invention is patentably distinct from the cited documents, Applicants again offer to submit an appropriate terminal disclaimer as suggested in the Office Action at page 14 if the claims are otherwise found allowable.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

By Richard E. L. Henderson  
Richard E. L. Henderson  
Attorney for Applicants  
Reg. No. 31,619

Bayer CropScience LP  
2 T.W. Alexander Drive  
Research Triangle Park, NC 27709  
Ph.: (919) 549-2183  
Fax: (919) 549-3994  
Q:patents/prosecution documents/cs8772/8772 amendment 7-20-10